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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-6853

LEAH LYNN PARRISH WEBB, Petitioner

v.

JAMES THOMAS WEBB, Respondent

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The Peitioner, LEAH LYNN PARRISH WEBB, hereby moves this Court to grant her leave to file the attached Petition for Writ of Certiorari to the Supreme Court of the State of Georgia without prepayment of costs and to proceed in forma pauperis.

The Petitioner's affidavit in support of this motion is attached hereto.

Roy M. Sobelson
Edward R. Zacker
1421 Union Street
Post Office Box 10
Brunswick, Georgia 31521
912/264-7301

John L. Cromartie, Jr.
133 Luckie Street, N.W.
8th Floor
Atlanta, Georgia 30303
404/656-6021

Mary R. Carden
1276 Spring Street
Post Office Box 1337
Gainesville, Georgia 30501

Attorneys for Petitioner

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No._____

LEAH LYNN PARRISH WEBB, Petitioner

v.

JAMES THOMAS WEBB, Respondent

AFFIDAVIT

I, LEAH LYNN PARRISH WEBB, being first duly sworn according to law, depose and say, in support of my motion for leave to proceed without being required to prepay costs of fees: 1. I am the Petitioner in the above-entitled case. 2. Because of my poverty I am unable to pay the costs of said cause. 3. I am unable to give security for the same. 4. I believe that I am entitled to the redress I seek in said case. 5. I am being represented by an attorney at no cost to myself. 6. The nature of said cause is briefly stated as follows:

Pursuant to a Georgia divorce decree in 1977, my son and I moved to Florida. In February of 1979, my ex-husband removed my son from Florida and took him back to Georgia. I obtained a judgment in a Florida Court ordering Mr. Webb to return my son to me. Nevertheless, Mr. Webb filed a case in Georgia, seeking custody of my son, and prevailed. The Georgia trial and Supreme Courts refused to dismiss the case by recognizing the finality of the Florida decree. Not only did the decree give my ex-husgand custody, it gave me no visitation rights, and I have not been allowed to see my son since May of 1979.

Leah Lynn Parrish Webb

Sworn to and subscribed before me,

this 16 day of June, 1980.

Notary Public

Notary Public, State of Florida at Large
My commission expires Oct. 26, 1980

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-6353

LEAH LYNN PARRISH WEBB, Petitioner

v.

JAMES THOMAS WEBB, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

Roy M. Sobelson
Edward R. Zacker
1421 Union Street
Post Office Box 10
Brunswick, Georgia 31521
912/264-7301

John L. Cromartie, Jr.
133 Luckie Street, N.W.
8th Floor
Atlanta, Georgia 30303

Mary R. Carden
1276 Spring Street
Post Office Box 1337
Gainesville, Georgia 30501

Attorneys for Petitioner

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. _____

LEAH LYNN PARRISH WEBB, Petitioner

v.

JAMES THOMAS WEBB, Respondent

The Petitioner, LEAH LYNN PARRISH WEBB, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Georgia Supreme Court entered on April 8, 1980, and its denial of rehearing entered April 22, 1980.

OPINION BELOW

The opinion of the Georgia Supreme Court, reported at 245 Ga. 650, appears in the Appendix hereto. The dissenting opinion and denial of rehearing also appear therein.

JURISDICTION

The Georgia Supreme Court affirmed the trial court's ruling on April 8, 1980. Following Petitioner's Motion for Rehearing filed on April 14, 1980, said Court denied rehearing on April 22, 1980.

This Court has jurisdiction pursuant to 28 U.S.C. 1257(3). Jurisdiction is invoked under the certiorari jurisdiction of this Court to review rulings of a state court involving federal constitutional law issues.

QUESTION PRESENTED

The question presented for review is as follows:

Does Article IV, § I of the United States Constitution, demand that Georgia, a signatory to the Uniform Child Custody Jurisdiction Act, give full faith and credit to a Florida decree rendered immediately prior to Georgia's acceptance of unqualified jurisdiction over an action to modify a custody decree when no intervening change of circumstances has occurred since the rendition of the Florida decree.

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Article IV, § I:

> Full faith and credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress May by general laws prescribe the manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof.

STATEMENT OF THE CASE

This petition arises from Mr. Webb's action to modify a Georgia custody award rendered in 1977. Pursuant to such award, Petitioner and her son moved to and established residency in the State of Florida. Contrary to the decree, in February of 1979, the father removed the minor child to his home in Georgia. Petitioner then filed an action in Florida under the Uniform Child Custody Jurisdiction Act to domesticate the 1977 Georgia decree, specify Mr. Webb's visitation rights, and compel him to return the child to Florida. Though personally served, the father made no response or appearance in the Florida action; but a month after taking the child, he filed an action in Georgia to modify the 1977 custody award. Prior to the Georgia trial, Florida entered judgment wholly favorable to Petitioner herein.

Petitioner then sought, under Georgia's Uniform Child Custody Jurisdiction Act, to have Georgia dismiss the Georgia case, according full faith and credit to the Florida judgment. The Georgia court ignored Florida's final judgment, and accepted jurisdiction on the basis of findings of abandonment and state residency, contrary to Florida's findings. Said findings, not relating to the issue of custody itself, could not have been based on any change of circumstances, since the acts in question had already all occurred even before Florida entered judgment.

The appeal raised, among other issues, the question of whether Georgia was required to grant the Florida judgment full faith and credit, and dismiss the Georgia case because the claims raised therein were res judicata. The Supreme Court of Georgia, though recognizing the finality of the Florida judgment, declined to specifically rule on the full faith and credit question presented. However, by ruling that the Florida decree did not preempt Georgia's jurisdiction, and basing its own jurisdiction on findings inconsistent with those of the Florida court, it impliedly rejected the notion that full faith and credit should have been accorded to the Florida decree.

HOW FEDERAL QUESTION IS PRESENTED

The federal question involved was first raised in Petitioner's Eleventh Defense to Plaintiff's complaint, where (as Defendant) she asserted:

> "Plaintiff herein continues to act contrary to the order of the Superior Court of Berrien County, entered September 22, 1977, and also acting in violation of the April 19, 1979, order of the circuit court of Alachua County, Florida (Case No. 79-569-CA) which order should be accorded full faith and credit by this court, as it was made pursuant to relevant Florida law as stated above." (R-7).

The final Florida decree was introduced (T-8; R-55; Exhibit 6) at trial and oral argument was made in support of a motion to dismiss. It was subsequently raised in Petitioner's Enumeration of Errors to the Georgia Supreme Court (Error VI).

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW VIOLATES ESTABLISHED PRINCIPLES WHICH DICTATE THAT A COURT ACCORD FULL FAITH AND CREDIT TO AN EARLIER COURT'S CUSTODY DECREE WHICH WAS RENDERED IN ACCORDANCE WITH DUE PROCESS STANDARDS, AND THE PROPRIETY OF WHICH COULD NOT HAVE CHANGED IN THE INTERVENING PERIOD.

The essential question presented for review is the extent to which the full faith and credit clause of the United States Constitution requires two signatories of the Uniform Child Custody Jurisdiction Act to give full faith and credit to each other's custody decrees which are granted in conformance with that Act's mandates. Unlike previous custody cases interpreting the full faith and credit clause, this case does not center on any possible inadequacies of the initial rendering court in terms of its jurisdictional power over the parties to the action. Similarly, the possibility of a significant change in circumstances between the time of the original decree and the second court's review, does not exist here. Since the decisions of the Florida and Georgia trial courts were rendered practically simultaneously, the question is a very pure one. The case squarely places before this Court the question of whether the fact that a final decree deals with custody should give license to other courts to refuse to give full effect to it.

The extent to which the Georgia Supreme Court's ruling herein conflicts with recognized principles on that subject is thus the question on review. A brief explanation of such principles will reveal the inherent conflict between this decision and earlier ones.

Although the full faith and credit clause of the United States Constitution seems absolute on its face, the Supreme Court of the United States has qualified that requirement in some respects when dealing with custody cases. In the last 35 years, at least four cases involving this issue have come before this Court. In Halvey v. Halvey, 330 U.S. 610 (1947), the Supreme Court was faced with the question of whether a New York court had the authority to modify a final custody decree rendered in Florida. While New York had granted some effect to the original Florida decree, it also asserted that it had the right to modify that original judgment in any way it saw fit, in accordance with the "best interests" of the child. This Court, stating that "the state of the forum has at least as much leeway to disregard the judgment, to qualify, or to depart from it as does the state where it was rendered," upheld New York's ruling which had modified the original Florida decree. Halvey, supra at 615. While not directly deciding the extent to which full faith and credit may or may not always require such a result, the Court's opinion clearly did not discourage the forum shopping that often occurs in custody cases. Thereafter, whenever a state was able to acquire subject matter jurisdiction over the custody issue, it felt free to ignore or at least modify previous custody determinations on the grounds that new circumstances had occurred subsequent to the original hearing.

The next case to involve this central question was May v. Anderson, 345 U.S. 528 (1953). In May, the father had been granted custody in an ex parte Wisconsin divorce. When Mr. Anderson filed a habeas corpus case to enforce this decree in Ohio, the Ohio Supreme Court returned possession of the child to him. In an opinion by the United States Supreme Court, Justice Burton, writing for the plurality, concentrated primarily on the issue of whether it was appropriate for the Wisconsin court

to have made its initial ruling when the defendant mother was neither domiciled, resident, nor present in the state when it had ruled on the custody of her children. Thus stated, the Court apparently refused to apply the strict mandates of the full faith and credit clause, primarily because it had some troubling questions about whether in personam jurisdiction had ever existed in the first place, thereby making it distasteful to require that a later court recognize the validity and finality of that initial decree.

Like the Halvey decision, the May decision has been severely criticized. Sanders, Prevention of Child Stealing: The Need for a National Policy, 11 Loyola of Los Angeles Law Review, 829 836 (1978). Like Justice Jackson, many commentators agree that the failure to grant full faith and credit reduces these disputes to lawless battles determined primarily by present possession of the children involved. Id. at 837.

Two later cases apparently continued this trend. Kovacs v. Brewer, 356 U.S. 604 (1957) made it clear that as long as the principal issue was custody of a child, the "best interest of the child" test required that a decree could be modified virtually at any time in accordance with "changed circumstances," thus not giving apparent recognition or effect to an initial final decree. Likewise, in Ford v. Ford, 371 U.S. 187 (1962), the Court again refused to rule that full faith and credit absolutely required a state to fully recognize any child custody decree rendered by a sister state. In Ford, however, there was a serious concern over the adequacy of the initial court proceeding, because the decree was based on a parental agreement which apparently had not been subjected to court approval, and had not been entered into on a basis of any evidence presented before a court.

Thus, in every case in which the United States Supreme Court has dealt with this issue, the final ruling has rested on some tangential element of the case. At the very least, all of these cases seem to require that a second court accord any judgment only so much effect as would the first court, and that it is always appropriate for the second state to make a determination as to whether the procedure in the initial state was adequate to fully decide the issue.

With the exception of the instant case, the Georgia courts have likewise expressed such concerns. While several cases suggest that full faith and credit is absolute on its face, the Georgia Supreme Court has made it clear that this rule is subject to the requirement that the initial rendering state should have assumed jurisdiction under appropriate constitutional standards, and that the judgment should have been made in accordance with fair and rigorous procedures. See Beggs v. Beggs, 208 Ga. 415, 67 S.E.2d 135 (1951); Ferster v. Ferster, 220 Ga. 319, 138 S.E.2d 674 (1964); Beiden v. Strickland, 218 Ga. 105, 126 S.E.2d 670 (1962). Furthermore, in cases involving the enforcement of a judgment rendered in accordance with procedures dissimilar to those adopted by Georgia courts, the Georgia Supreme Court has been willing to recognize such judgments only insofar as it is able to find that the requirements under which the initial decree was made are in strict conformance with due process standards. See Whitaker v. Whitaker, 237 Ga. 895, 230 S.E.2d 486 (1976).

It is clear that the refusal of the Georgia Supreme Court to give full faith and credit to the Florida judgment, and grant Petitioner's writ of habeas corpus, is in conflict with the foregoing general principles enunciated by this Court in cases raising the issue of full faith and credit in custody

matters. While this Court has never stated that full faith and credit is an absolute requirement in such cases, the opinions which have allowed a deviation from an absolute rule have always done so on the basis of some obvious concern for the adequacy of the proceedings in the first instance, or the possibility that circumstances may have changed from the time of the initial decree. No such situation exists here. Immediately following the child's abduction from the state of Florida, the mother sought to have the Florida court assume jurisdiction over the matter under the mandates of the Uniform Child Custody Jurisdiction Act, as adopted in Florida. After making an initial order, the Florida court then proceeded to take testimony from the mother regarding the question of her residency in the state of Florida and the circumstances under which her ex-husband had removed the child from the state. After hearing this testimony, the trial court concluded that the mother and child were Florida residents, that the father had acted improperly, that Florida could restrain him from removing the child from the state, and that it also had the authority to retain jurisdiction over the matter for the purposes of enforcement of the order. Only days after this, the Georgia court concluded that the child's removal from the state of Florida had been necessitated by emergency, that the child was in fact a resident of Georgia, and that it alone had jurisdiction over the cause because the child was domiciled in the state of Georgia at the time Mr. Webb began his proceedings. These findings, being clearly inconsistent with those of the Florida court, were not in any way based on any possible change of circumstances since Florida's entry of judgment. They were in fact a new determination based on exactly the same issues which had been brought to the attention of the Florida court, and as such, the refusal of the courts of Georgia to recognize the finality of the decision of Florida is

directly contrary to the principles enunciated by the United States Supreme Court.

2. THE APPLICATION OF THE FULL FAITH AND CREDIT CLAUSE TO CUSTODY DECREES IS AN ESSENTIAL ELEMENT IN THE EFFECTIVE USE OF THE UNIFORM CHILD CUSTODY JURISDICTION ACT, ONE PURPOSE OF WHICH IS TO DETER THE ABDUCTION OF CHILDREN.

While Florida and Georgia are only two of the signatories to the Uniform Child Custody Jurisdiction Act, they are by no means alone. To date, at least 44 other states have adopted this act. 6 Fam. L. Rep. 1113, May 27, 1980. Two of the express purposes of the statute are to "deter abductions and other unilateral removals of children undertaken to obtain custody awards" and to "facilitate the enforcement of custody decrees of other states". Ga. Code § 74-502. This Act, incorporating these two essential principles, was obviously formulated in response to the epidemic proportions which child abduction has taken on in the last several years in this country. Stern, Stemming the Proliferation of Parental Kidnapping: New York's Adoption of the Uniform Child Custody Jurisdiction Act, 45 Brooklyn Law Review, 89, Fall 1978.

The Georgia courts, like many others, while expressing grave concerns about "child snatching" (See especially Matthews v. Matthews, 238 Ga. 201, 232 S.E.2d 76 (1977)), have applauded the adoption of the Uniform Act. See also Reid v. Adams, 241 Ga. 521, 246 S.E.2d 655 (1978). Likewise, Congress has considered the possibility of adopting a statute to require that the mandates of the full faith and credit clause be applied to child custody cases (See Proposed H. R. 6786, 95th Congress, First Session, Proposal of April 29, 1977 for "A Bill To Exercise The Power Of Congress Under Article IV Of The Constitution To Declare The Effect Of Certain State Judicial Proceedings Respecting The Custody Of Children"). Thus far, however, these efforts have

been unsuccessful. Nevertheless, most commentators are in agreement that the adoption of a uniform act in most states will increase cooperation among the states and eventually help to stem the tide of child snatching for the purposes of gaining access to more favorable litigation forums.

The Uniform Child Custody Jurisdiction Act, as adopted in Florida and Georgia, has several provisions by which it attempts to reinforce these principles. First, it discourages the courts from determining the question of jurisdiction based solely on the presence or absence of the child in a state. Presence itself does not necessarily confer jurisdiction upon a court, and the absence of a child does not necessarily defeat jurisdiction. Second, it provides that there should be maximum communications between states which may be entertaining similar petitions at the same time, so as to prevent duplication of effort, and the deliberate hiding of proceedings from a court by a litigant from another state. Third, the Act gives courts the right to decline jurisdiction because of the wrongful conduct of a party to the action. Fourth, and perhaps most important, it provides that courts should recognize and give effect to decrees of other states which are rendered in accordance with the mandates of the act itself. See Bodenheimer, The Uniform Child Custody Jurisdiction Act, Fam. L. Q. 45 (1974).

All of these provisions, however, act together to achieve one primary purpose, which is to insure that custody decrees which have been rendered with access to all relevant information are honored and are not disregarded by the parties or the states involved. In the absence of a clear statement by this Court, that the full faith and credit clause requires recognition of child custody decrees rendered in accordance with the mandates of the Act and the requirements of due process,

our states' courts will remain free to ignore decrees rendered in sister states, and will thus continue to encourage child abductions for the purpose of gaining access to more acceptable forums.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Supreme Court of Georgia.

Respectfully submitted,

Roy M. Sobelson

John L. Cromartie, Jr.

Mary R. Garden

Attorneys for Petitioner

In the Supreme Court of Georgia

Decided: APR 08 1980

35703. WEBB v. WEBB.

Clarke, J.

This case calls for an interpretation of certain provisions of Georgia's Uniform Child Custody Jurisdiction Act, Code Ann. § 74-501, et seq. The mother appeals an order of the Superior Court of Berrien County modifying a previous final decree of divorce by changing custody from the mother to the father. The court also denied the mother's counterclaim for contempt and her application for a writ of habeas corpus.

The evidence authorized a finding that subsequent to the entrance of a final decree of divorce entered in Berrien County September 22, 1977, giving custody of the minor child to the mother, the mother moved some six times and finally established residency near Gainesville, Florida. On February 17, 1979, the mother left the six-year old child of the parties without adult supervision at her home and flew to Miami for a weekend. Having been contacted by Florida authorities, the father went to Florida, picked up the child and returned to his home in Berrien County, Georgia.

On March 8, 1979, the wife filed an action in Alachua County, Florida, praying for an injunction for the purpose of enforcing the Georgia decree and seeking an order limiting visitation rights of the father. On March 23, 1979, before the issuance of a permanent order in the Florida action, the father filed a complaint in Berrien County, Georgia, asking that the original Georgia decree be modified to change custody of the minor child to him. The mother counterclaimed for contempt and sought a writ of habeas corpus. Subsequent to the filing of the complaint in Georgia by the father, and prior to any hearing in Georgia on the matter, the Florida court entered a final order on April 18, 1979, establishing the Georgia decree as the judgment of the Florida court and modifying the father's visitation rights.

The Superior Court of Berrien County heard evidence on the father's complaint on May 10, 1979, and on June 21, 1979, entered an order changing custody to the father and ruling that the father was not in contempt as alleged by the counterclaim. The mother's counterclaim for habeas corpus was likewise denied. The mother appeals from this order of the Superior Court of Berrien County.

(1) The mother contends that Georgia was not an appropriate or convenient forum for determination of the custody of the child because of insufficient contacts between the parties and this State. While it is true that the child was in Florida with the mother under a valid original decree of the Berrien County court giving custody to the mother, we find that the Georgia court was authorized under the evidence to find that the father retrieved the child in the face of an emergency situation created by the mother. The circumstances of the child's retrieval by the father were sufficient to afford Georgia jurisdiction under Ga. Code Ann. § 74-504(a)(3).

(2) The mother also argues that the pendency of the Florida action preempted Georgia jurisdiction. The action was pending in Florida at the time the father filed his suit, and while the father did not properly inform the Georgia court of this fact, this information was fully supplied to the Georgia court by the mother in her motion to dismiss. This fact placed a duty upon the trial court to confer with the Florida court with a view toward determining the appropriate forum. Code Ann. § 74-507. This was not done. Correspondingly, the Florida court, having notice in the mother's pleadings that an action might be pending in Georgia, was under a duty to confer with the

Georgia court. There is nothing in the record before this court to indicate any effort on the part of the Florida court to fulfill this duty prior to entering its final judgment.

Among the primary purposes of the Uniform Child Custody Jurisdiction Act is to avoid overlapping adjudication and to prevent judgment races. In this case, neither state made a contribution toward that goal. The Georgia court exercised its jurisdiction with knowledge of the case in Florida. The Florida court entered its final order with notice that an action might be pending in Georgia.[1/] Neither court consulted the other.

The action required of a court before assuming jurisdiction or conducting a hearing in a custody proceeding is that the court determine whether an action is pending in another state. Code Ann. § 74-507. As subsections (b) and (c) clearly reveal, the crucial determination by the court is whether at the time it assumes jurisdiction another court is presently exercising jurisdiction over the issue of custody of the child. In the present case, at the time of the hearing on May 10, 1979, on the mother's motion to dismiss for lack of jurisdiction and upon

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1/ The duty of a party to inform the court of any custody proceeding in any other state continues during the entire proceeding. Code Ann. § 74-510(c).

the case in chief, the Georgia court had before it the final order of the Florida court entered April 18, 1979, concluding the Florida action. No additional inquiry was necessary, it being apparent that the Florida action had been concluded before the Georgia court exercised jurisdiction, although after the Georgia petition was filed. An investigation at that point would have been futile, and it is clear that the law does not require a useless act. Had the Georgia proceeding been dismissed, there could have been no resolution of the custody dispute by any court unless a new lawsuit were brought. This result would be contrary to principles of judicial economy and orderly administration of justice and would have done nothing to advance the purpose of § 74-507, which is the prevention of jurisdictional conflicts between the states. Consequently, we find that the pendency of the Florida action at the time the Georgia action was filed did not preempt the jurisdiction of the Georgia court.

(3) The mother also assigns error in the court's finding that there had been a material change in circumstances affecting the welfare of the child so that custody should be changed to the father. In making the determination whether there has been a material change in circumstances affecting the child, the trial court is vested with broad discretion which will not be disturbed

on appeal unless abused. Wrede v. Beuke, 221 Ga. 778 (147 SE2d 324) (1966); Mallette v. Mallette, 220 Ga. 401 (139 SE2d 322) (1964). We find that the trial court did not abuse its discretion in finding it in the best interest of the child that custody be awarded to the father.

The remaining enumerations of error are without merit.

Judgment affirmed. All the Justices concur except Justices Gordon, Nell and Marshall, who dissent.

HILL, Justice, dissenting.

The mother left her six year old son in the care of his 13 year old step-sister for a weekend. The mother's cousins, who lived next door, were looking after the children. While such conduct may not be proper child care, it does not constitute abandonment or an emergency. The father brought the child back to Georgia on February 18, 1979, and did not file this suit until March 23, over a month later.

The majority find (division 1, supra) that the Georgia court had jurisdiction under Code Ann. § 74-504(a)(3). That section provides that "A court of this State which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if: . . . (3) The child is physically present in this State and (A) the child has been abandoned or (B) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent." This is § 3(a)(3) of the Uniform Child Custody Jurisdiction Act.

To avoid "child snatching" of allegedly abandoned children, or children found in a situation alleged to be an emergency,

I would hold that § 3(a)(3) of the UCCJA, Code Ann. § 74-504(a)(3), supra, gives jurisdiction to a court of that state where the child is physically present when the alleged abandonment or emergency is discovered by his or her parent or person claiming the right to custody. That would be the Florida court in this case. In my view the majority has condoned child snatching contrary to the landmark decision in Mathews v. Mathews, 238 Ga. 201 (232 SE2d 76) (1977).

I respectfully dissent to this return to the old ways. I am authorized to state that Jordan and Marshall, JJ., join in this dissent.